

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

**Petition for Reconsideration of
Hicks and Ragland Engineering Company, Inc.**

Hicks and Ragland Engineering Company, Inc. ("Hicks and Ragland"), pursuant to Section 1.429 of the Commission's rules,¹ respectfully seeks reconsideration of the Fifth Report & Order ("Order") released herein on July 15, 1994.² Hicks and Ragland is a consulting engineering firm providing service primarily to rural telecommunications service providers, including assistance with the design and development of wireless PCS networks. Hicks and Ragland is concerned that Section 24.714(d) of the Commission's rules, as it pertains to post-auction partitioning, unnecessarily restricts the scope of negotiations for partitioned licenses, will complicate the processing of partitioned license applications, and will inhibit the rapid deployment of service to rural areas.

¹ 47 C.F.R. § 1.429.

² Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Fifth Report & Order, released July 15, 1994, 59 Fed. Reg. 37566 (July 22, 1994) ("Order").

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DISCUSSION

Section 24.714(d) requires, inter alia, that partitioned license areas must be "reasonably related to the rural telephone company's wireline service area." This rule also notes that partitioned service areas will be presumed to comply with this rule "if the partitioned area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area." 47 C.F.R. § 24.714(d)(3).³ Hicks and Ragland respectfully submits that the incorporation of this benchmark into the rules may unnecessarily restrict the ability of licensees and rural telephone companies to negotiate partitioned license areas which serve the public interest as well as both parties interests.⁴

The Commission has stated previously that auction mechanisms generally should award licenses to those who value them most highly. See, e.g., Order, para. 5. Accordingly, if a rural telephone company values an identified geographic area which includes its wireline service area more highly than the auction

³ Hicks and Ragland does not take issue with this rule's other requirements: that the partitioned license area conform to established geopolitical boundaries and include the wireline service area of the rural telephone company applicant. See 47 C.F.R. § 24.714(d)(1), (d)(2).

⁴ Hicks and Ragland notes that the Commission's decision that construction requirements apply to the partitioned area should alleviate any concern regarding evasion of the buildout requirements. 47 C.F.R. § 24.714(e). See Memorandum Opinion and Order, Docket 90-314, FCC 94-144, released June 13, 1994, para. 83 (rejecting geographic partitioning generally due to concerns that parties might thus evade construction requirements).

winner, that licensee should not be restricted from selling it. No unjust enrichment to the licensee should result, since it would presumably have been required to pay the same price, relative to other bidders, absent the knowledge that a rural telco would seek to partition the license, in order to win the auction. Moreover, the Commission could protect against unjust enrichment by limiting the price which a licensee could charge for a partitioned license to no more than the pro rata share (on a per-pop basis) of the licensee's auction bid.⁵

Hicks and Ragland believes that the public interest would be best served by eliminating any reference in the rules to artificial limits on the population covered by rural telephone company partitioned area licensees. Any such benchmark may unnecessarily impede the ability of a rural telephone company to provide service in a technically and economically feasible manner in rural areas. To the contrary, the rules should encourage the provision of service to rural areas by rural telephone companies that are willing to operate partitioned licenses in rural areas. To that end, the size of partitioned areas should be determined not by an arbitrary limit based on the borders of their wireline service area, but based on business judgment and a careful assessment of

⁵ See ex parte filing of NTCA, U.S. Intelco, OPASTCO, Western Alliance, Rural Cellular Association, Small Telephone Companies of Louisiana, Minnesota Equal Access Network Services (MEANS), and Iowa Network Services (INS), PP Docket 93-253, June 2, 1994.

the economics of providing PCS services in rural markets.⁶

Hicks and Ragland is also concerned that artificial limitations on the size of partitioned areas will unnecessarily impede rural telephone companies' ability to realize economies of scale, reducing the cost-effectiveness of new PCS services and inhibiting rapid deployment of these services to rural areas.⁷ While demand for communications services in rural areas is significant, that demand is more widely dispersed than in urban areas. See Statement of the Rural Telephone Coalition, PCS Task Force Hearings, April 11-12, 1994. Additionally, in the wireline service market, telephone companies average rates between high-density and low-density areas to support the cost of wireline service in low-density areas.

Accordingly, rural telephone companies should be free to structure partitioned license areas to achieve some economies of scale. Limiting the area of a partitioned license may not allow for the creation of a cost-effective business, and in fact, may delay or preclude the delivery of service to rural areas.

⁶ See Separate Statement of Commissioner Rachelle B. Chong, Fifth Report & Order, (expressing concern with undue Commission interference with such business judgments).

⁷ Hicks and Ragland Engineering has examined from a technical perspective the costs of constructing a viable PCS network in rural areas. In its professional opinion, equipment and construction costs in rural areas are such that many wireline telephone company service areas, by themselves, will not provide sufficient economies of scale to justify wireless network costs.

Additionally, Hicks and Ragland is concerned that many partitioned license applications, grant of which would serve the public interest in all respects, may in fact be denied based on this unnecessary language. The Order notes that rural telephone companies will require flexibility in fashioning partitioned license areas; thus, the Commission does not adopt a strict rule but a "general presumption." Fifth Report & Order, para. 151. Hicks and Ragland submits, however, that the inclusion of this unnecessary presumption may deter the implementation of proposals by rural telephone companies to provide PCS in rural areas by complicating the processing of partitioned license applications. The reasonableness of any partitioned license application need only be judged by whether grant will serve the public interest.⁸ Accordingly, Hicks and Ragland submits that the Commission's intentions could be better served by the removal of the referenced language from the rules.

CONCLUSION

Hicks and Ragland is concerned that artificial population coverage limits for PCS licenses partitioned to rural telephone companies may unnecessarily impede the implementation of service in rural areas. Consistent with the intent of Congress, rural telcos should be encouraged to identify appropriate areas for partitioning

⁸ As the Commission acknowledges, the public interest includes the Congressional mandate to promote rapid deployment of service to rural areas, See, e.g., 47 U.S.C. § 309(j)(3)(A), and to ensure opportunities for participation by rural telcos. See, e.g., 47 U.S.C. § 309(j)(4)(D), Fifth Report & Order, para. 19.

free of arbitrary and artificial limits, subject only to the public interest standard and conformity with other aspects of the Commission's Rules, including a relationship of the partitioned area to established geopolitical boundaries and an association with some service area of the rural company.

Accordingly, Hicks and Ragland submits that the Commission's goals would be better served by amending 47 C.F.R. § 24.714(d)(3) to eliminate that rule section's notation that "a partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area."

Respectfully Submitted,

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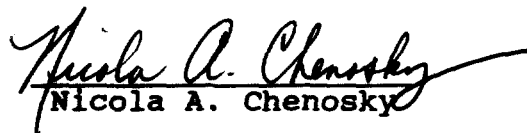
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August 22, 1994

CERTIFICATE OF SERVICE

I, Nicola A. Chenosky, hereby certify that on this 22nd day of August, 1994, a courtesy copy of the foregoing "Petition for Reconsideration of Hicks and Ragland Engineering Company, Inc." was served by hand delivery to the following parties:


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